IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7668 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHHAGANBHAI NAROTTAMBHAI PATEL

Versus

DAHIBEN K. PATEL

Appearance:

1. Special Civil Application No. 7668 of 1991

MR RN SHAH for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR PD SHAH for Respondents No. 2-3

MR DU SHAH for Respondents No. 2-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 01/02/2002

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 227 of the Constitution of India and challenged the impugned orders passed by the Mamlatdar and ALT, Mahua (Annexure-C) and order passed by the Deputy Collector, Vyara in Tenancy Appeal No.13 of 1985 (Annexure-B) and the order passed by the Gujarat Revenue Tribunal (for short "Tribunal") dated 27.12.1990 in revision (Annexure-A) whereby all the three authorities have concurrently found against the petitioner-plaintiff that he failed to prove that he was a tenant of the disputed land.

2. In view of the concurrent finding of facts arrived at by all the three courts below against the petitioner, Mr.Shah for the petitioner was not in a position to challenge the impugned orders at Annexures A, B and C passed by the authorities below. However, he requested that the petitioner be permitted to file fresh suit on the strength of enough evidence under Section 70-b of the Bombay Tenancy Act as observed by the learned Mamlatdar in his impugned order Annexure-C.

3. It appears that the petitioner was under reasonable belief that in his application under Section 70-b of the Act he has produced sufficient evidence to declare him as tenant under Section 70-b of the Act, therefore, he carried the impugned order passed by learned Mamlatdar first in appeal before the Deputy Collector and then in revision before the Tribunal, when the learned Collector dismissed his appeal. Not satisfied with the order of Tribunal, he filed this petition under Article 227 of the Constitution of India as stated earlier.

4. In case of Mohd. Yunus Vs. Mohd. Mustaqim & Ors. reported in AIR 1984 SC 38 the Hon'ble Supreme Court held in its supervisory jurisdiction under Section 227 of the Constitution of India High Court cannot even correct errors of law. Under the circumstances, there is no question of entertaining with the impugned orders passed by the authorities below in this petition which is filed under Section 227 of the Constitution of India.

5. However, when the learned Mamlatdar himself permitted the petitioner to file fresh application with further evidence, then there cannot be any difficulty in allowing the petitioner to file fresh petition. If so advised, he can approach the learned Mamlatdar again by way way of fresh application under Section 70-b of the Tenancy Act as early as possible preferably within three

months from today. As and when such application is filed, I am sure that the learned Mamlatdar will decide the same in accordance with law as per the observations made by his predecessor in his impugned order at Annexure-C.

6. At this stage, learned counsel Shri Shah for the petitioner submitted that unfortunately due to lack of sufficient evidence he failed before all the three authorities below in his application under Section 70-b of the Tenancy Act, but the possession of land in question remained with him which was earlier cultivated by his father and forefathers. According to him, even today, he is in possession of the land and while admitting this petition the learned Single Judge of this court on 11.12.1999 by way of ad-interim relief directed that no further action pursuant to the impugned judgment and order at Annexures A, B and C shall be taken by respondents. Thus, according to him, the petitioner has remained in possession of the land in question till today. Therefore, his possession should be protected because he has developed and nourished the said land in question for years together. In support of his submission, Mr.Shah has relied upon judgment of the Hon'ble Supreme Court in the case of Brij Lal Vs. Board of Revenue and Ors. reported in AIR 1994 SC 1128. In case of Brij Lal (supra) the Hon'ble Supreme Court found that the petitioner was cultivating the land in question for more than two decades, therefore, the Hon'ble Supreme Court observed that it would be travesty of justice to dispossess such person from the land which he is nourishing for over a period of two decades. Accordingly, that matter was allowed by the Hon'ble Supreme Court.

7. However, Mr.Shah, learned counsel appearing for the respondents submitted that they are in possession and the petitioner was never in possession of the land in question.

8. From the judgment of the learned Mamlatdar it appears that some of the witnesses have deposed before the learned Mamlatdar that the petitioner was in possession and his possession was protected by this court while admitting this petition.

9. Under the circumstances, I am of the considered opinion that interest of justice would be served by directing the respondents not to take forcible possession from the petitioner, if the petitioner has remained in possession till today. They will be at liberty to

recover the possession of the land only in accordance with law. With these observations and directions, this petition is dismissed. Rule discharged. No order as to costs.

(B.J.Shethna, J.)

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